

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**CHURCHILL, IYKE,**

Plaintiff(s),

**Index No. 08CIV0255**

-against-

**ANSWER**

CITY OF MOUNT VERNON, LIEUTENANT EDWARD  
ADINARO, DETECTIVE ENZO BAIA, DETECTIVE MARTIN  
BAILEY, DETECTIVE R. BONCARDIO, DETECTIVE FEGAN (SCR)  
GEORGIO, DETECTIVE MASPROGIORGIO, DETECTIVE  
GEORGE OSSIBO, John Doe #1, John Doe #2 and Jane  
Doe, (first names and complete names of some individuals  
Listed above are to be determined)

Defendants.  
-----X

Defendants CITY OF MOUNT VERNON, LIEUTENANT EDWARD  
ADINARO, DETECTIVE ENZO BAIA, DETECTIVE MARTIN BAILEY, DETECTIVE R.  
BONCARDIO, DETECTIVE FEGAN GEORGIO, DETECTIVE MASPROGIORGIO,  
DETECTIVE GEORGE OSSIBO, by the Office of the Corporation Counsel, HELEN M.  
BLACKWOOD answering the Complaint of Plaintiff alleges, upon information and  
belief:

**AS AND FOR AN ANSWER TO THE INTRODUCTION**

1. Denies the truth of each and every allegation contained in paragraph  
number "1" of the Complaint and refers all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER TO JURISDICTION AND VENUE**

2. Denies the truth of each and every allegation contained in paragraphs  
numbered "2" and "3" of the Complaint and refers all questions of law to this Honorable  
Court.



**AS AND FOR AN ANSWER TO THE PARTIES**

3. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs numbered "4", "6","7" of the Complaint.

4. Admits each and every allegation contained in paragraphs numbered "5", "8", "9", "10", "11","13","14","15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", and "27" of the Complaint.

5. Denies the truth of each and every allegation contained in paragraph number "12" of the Complaint and refers all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER TO NOTICE OF CLAIM**

6. Denies each and every allegation contained in paragraph number "28", "29","30" and "31" of the Complaint except admits that a document purporting to be a Notice of Claim was served and the Defendants have not made any adjustments.

**AS AND FOR AN ANSWER TO THE FACTUAL BACKGROUND**

7. Denies the truth of each and every allegation contained in paragraphs numbered "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "55", "56", "57", "58", "59", "60", "61", "62", "63", "64", "65", "66", "67", "68", "69", "70", "71" and "73" of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs numbered "54", "72", "74","75", "76", "77" and "78" of the Complaint.

**AS AND FOR AN ANSWER TO THE FIRST COUNT**

9. Answering paragraph number "79" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "8" with the same force and effect as if fully set forth at length herein.

10. Denies the truth of each and every allegation contained in paragraphs numbered "80", "81" and "82" of the Complaint.

**AS AND FOR AN ANSWER TO THE SECOND COUNT**

11. Answering paragraph number "83" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "10" with the same force and effect as if fully set forth at length herein.

12. Denies the truth of each and every allegation contained in paragraphs numbered "84", "85" and "86" of the Complaint.

**AS AND FOR AN ANSWER TO THE THIRD COUNT**

13. Answering paragraph number "87" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "12" with the same force and effect as if fully set forth at length herein.

14. Denies the truth of each and every allegation contained in paragraphs numbered "88", "89" and "90" of the Complaint.

**AS AND FOR AN ANSWER TO THE FOURTH COUNT**

15. Answering paragraphs number "91" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "14" with the same force and effect as if fully set forth at length herein.

16. Denies the truth of each and every allegation contained in paragraphs numbered "92", "93" and "94" of the Complaint.

**AS AND FOR AN ANSWER TO THE FIFTH COUNT**

17. Answering paragraph number "95" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "16" with the same force and effect as if fully set forth at length herein.

18. Denies the truth of each and every allegation contained in paragraphs numbered "96", "97" and "98" of the Complaint.

**AS AND FOR AN ANSWER TO THE SIXTH COUNT**

19. Answering paragraph number "99" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "18" with the same force and effect as if fully set forth at length herein.

20. Denies the truth of each and every allegation contained in paragraphs numbered "100", "101" and "102" of the Complaint.

**AS AND FOR AN ANSWER TO THE SEVENTH COUNT**

21. Answering paragraph number "103" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "20" with the same force and effect as if fully set forth at length herein.

22. Denies the truth of each and every allegation contained in paragraphs numbered "104", "105" and "106" of the Complaint.

**AS AND FOR AN ANSWER TO THE EIGHTH COUNT**

23. Answering paragraph number "107" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "22" with the same force and effect as if fully set forth at length herein.

24. Denies the truth of each and every allegation contained in paragraphs numbered "108", "109", "110" and "111" of the Complaint.

**AS AND FOR AN ANSWER TO THE NINTH COUNT**

25. Answering paragraph number "112" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "24" with the same force and effect as if fully set forth at length herein.

26. Denies the truth of each and every allegation contained in paragraphs numbered "113", "114" and "115" of the Complaint.

**AS AND FOR AN ANSWER TO THE TENTH COUNT**

27. Answering paragraph number "116" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "26" with the same force and effect as if fully set forth at length herein.

28. Denies the truth of each and every allegation contained in paragraphs numbered "117" and "118" of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

Plaintiff's complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

If the plaintiff sustained damages as alleged in the complaint, which is expressly denied by these answering defendants, then such damages were caused in whole or in part by the culpable conduct of the plaintiff. The amount of damages otherwise recoverable, if any, shall therefore be diminished in the proportion that said culpable conduct attributable to plaintiff bears to the culpable conduct that caused such injuries.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover punitive damages against any of the individual police officers since their conduct did not rise to the level of morally culpable conduct that would support such a claim.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

Defendants acted in good faith and without the intent to violate plaintiff's civil rights.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

Any and all officers named in this suit are protected from suit by the doctrine of qualified immunity.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

Any and all officers named in this suit, and the City of Mount Vernon are protected from suit by the doctrine of absolute immunity.

**AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's constitutional and statutory rights were not violated by the defendants.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

The City of Mount Vernon cannot be held liable based on respondent superior for the alleged violations of plaintiff's civil rights.

**AS AND FOR AN NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims against the answering defendants are frivolous.

**AS AND FOR AN TENTH AFFIRMATIVE DEFENSE**

The actions of the defendants were justified under the circumstances.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

The Defendants had probable cause to arrest the Plaintiff as the Plaintiff was initially identified by an eyewitness and the deceased's girlfriend.



**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

The Defendants had arguable probable cause to arrest and detain the Plaintiff. thus they are entitled to qualified immunity.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

The Defendants had probable cause to request the initiation of prosecution of the Plaintiff.

The Defendants opinion that they had probable cause to request that the People commence action against the Plaintiff was objectively reasonable.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

The Plaintiff's arrest, handcuffing and subsequent incarceration were incident to his legal detention and does not amount to the type of punishment that violates the Fourteenth Amendment.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

Even if the Officers probable cause or reasonable cause was based on mistaken information the officers acted reasonably and in good faith relying on that information.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

Based upon a totality of the circumstances, the officers had probable cause, thus the Plaintiff's confinement was privileged.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

The City of Mount Vernon cannot be held liable based on respondent superior for the alleged violations of Plaintiff's civil rights.



**WHEREFORE**, Defendants, CITY OF MOUNT VERNON, LIEUTENANT EDWARD ADINARO, DETECTIVE ENZO BAIA, DETECTIVE MARTIN BAILEY, DETECTIVE R. BONCARDIO, DETECTIVE FEGAN GEORGIO, DETECTIVE MASPROGIORGIO, DETECTIVE GEORGE OSSIPO, John Doe #1, John Doe #2 and Jane Doe, demand judgment dismissing the Complaint in its entirety together with such other and further relief as this Court deems just and proper.

Dated: Mount Vernon, New York  
February 21, 2008

Yours, etc.,

Office of the Corporation Counsel  
Attorney for Defendant  
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